



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 183

[Docket No. USCG-2016-1012]

RIN 1625-AC37

Recreational Boat Flotation Standards--Update of Outboard Engine Weight Test Requirements

AGENCY: Coast Guard, DHS.

ACTION: Interim rule.

SUMMARY: The Coast Guard is issuing this interim rule to update the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material.

The engine weight table was last updated in 1984, and the Coast Guard Authorization Act of 2015 requires that we update the table to reflect a specific standard.

DATES: This interim rule is effective on June 1, 2018. Comments and related material must be submitted to the online docket via <http://www.regulations.gov>, or reach the Docket Management Facility, on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2016-1012 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or e-

mail Mr. Jeffrey Ludwig, Coast Guard; telephone 202-372-1061, e-mail

Jeffrey.A.Ludwig@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

ABYC	American Boat and Yacht Council
ABYC S-30	American Boat and Yacht Council S-30—Outboard Engines and Related Equipment Weights
CGAA	Coast Guard Authorization Act of 2015 (Pub. L. 114-120, 130 Stat. 27; Feb. 8, 2016)
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	<u>Federal Register</u>
IRFA	Initial Regulatory Flexibility Analysis
MIC	Manufacturer Identification Code
NAICS	North American Industry Classification System
NBSAC	National Boating Safety Advisory Council
NMMA	National Marine Manufacturers Association
OMB	Office of Management and Budget

Pub. L.	Public Law
RA	Regulatory analysis
§	Section symbol
SBA	Small Business Administration
U.S.C.	United States Code

II. Basis and Purpose

Section 308 of the Coast Guard Authorization Act of 2015 (Pub. L. 114-120, 130 Stat. 27) (CGAA) requires the Coast Guard to issue regulations, not later than 180 days after enactment, updating Table 4 of subpart H in Title 33 of the Code of Federal Regulations (CFR) part 183 to reflect the American Boat and Yacht Council S-30–Outboard Engines and Related Equipment Weights (ABYC S-30) standard.

Additionally, 46 U.S.C. 4302(b), which provides authority for 33 CFR part 183, requires the effective date for rules issued under that provision be delayed at least 180 days after publication, but not more than 2 years for cases involving major product design, retooling, or changes in the manufacturing process. It also requires consultation with the National Boating Safety Advisory Council (NBSAC).¹ Although this rule is issued pursuant to CGAA and not 46 U.S.C. 4302, it amends regulations issued pursuant to section 4302 and the 180-day delay is appropriate. The delay provides manufacturers with time to adjust their operations to comply with the new standard. We have implemented that delay of effective date in this rule.

III. Regulatory History

We did not publish a notice of proposed rulemaking before this interim rule. The Coast Guard finds good cause to forgo prior notice and opportunity to comment under 5 U.S.C. 553(b)(B), because section 308 of CGAA provides the Coast Guard no discretion in adopting the specific industry standard for engine weights. The Coast Guard may not decline to update the

¹ The NBSAC recommended to the Coast Guard in 2000 that the weight table be updated (Resolution number 2000-66-05), and discussed the replacement of Table 4 with the ABYC standard at their April 2016 meeting.

engine weight standards, choose to adopt a different standard, or respond to public comments by modifying the substance of the rule. Because the Act does not allow for alternatives; the Coast Guard may not adopt a different standard or modify the substance of the rule in response to public comments. Therefore, it was unnecessary and impracticable to provide the public with notice and opportunity to comment before publishing this interim rule.

This rule also relocates the relevant table within the CFR, and makes similar administrative changes that have no substantive effect on the public. Because these changes do not create or change any rights or responsibilities for the public, prior notice and opportunity to comment are unnecessary under 5 U.S.C. 553(b)(B). However, the Coast Guard is interested in the public's views on these changes.

In addition, we are delaying the effective date of this rule until June 1, 2018, for two reasons: (1) to meet the intent of 46 U.S.C. 4302(b), as described earlier in this rule, and (2) to align with the recreational boat model year so that requirements do not change during a model year production run. The delay in effective date allows time for a post-publication comment period and for non-substantive changes if needed.

Therefore, even though 5 U.S.C. 553 allows the Coast Guard to forgo notice and opportunity for comment prior to issuing this rule, we invite public comment on the interim rule. We will not have the authority to change the substance of the rule—for example, the specific weight standard used—in response to public comment, because that requirement is set in statute. However, we invite public comment on other aspects of the rule, such as changes we have made to cross-references, and we may make changes after considering those comments. We believe this strikes the best balance between satisfying the statute, putting a rule in place soon so that manufacturers can plan ahead, and allowing public comment to the extent we are permitted by

CGAA.

IV. Background

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat's design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines has evolved over the years to the point that Table 4 no longer accurately represents the weights of outboard engines available on the market.

The American Boat and Yacht Council (ABYC) is a non-profit organization that develops voluntary safety standards for the design, construction, maintenance, and repair of recreational boats. Among the voluntary safety standards that ABYC develops and updates on a regular basis is S-30—Outboard Engines and Related Equipment Weights (ABYC S-30). This standard reflects the current state of marine outboard engine weights.

V. Discussion of Rule

This rulemaking adopts the current ABYC S-30 to replace Table 4 of subpart H in 33 CFR part 183. The current ABYC S-30 is dated July 2012, and was the standard in effect on the date of enactment of the Act.

In the CFR, Table 4 applies to monohull outboard boats that are less than 20 feet in length, which includes recreational vessels as well as some commercial fishing vessels. It is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150

passengers), 46 CFR part 141 (towing vessels) and 46 CFR part 180 (small passenger vessels under 100 gross tons). Changing the figures in Table 4, as required by the Act, will require more flotation in each new boat, to support the weight of heavier engines.

This rule removes Table 4 and replaces it with a new section in subpart E of part 183. That section contains the table of the ABYC S-30 standard and its corresponding footnotes. We made minor edits to the footnotes developed by ABYC to accommodate the location of the table in the CFR and to reflect the removal of Table 4. We also made conforming changes to several sections that referenced Table 4.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). A regulatory analysis (RA) follows.

This RA provides an evaluation of the economic impacts associated with this interim rule. The Coast Guard is issuing an interim rule to implement section 308 of the CGAA. The CGAA mandates that the Coast Guard issue regulations to amend Table 4 of subpart H in 33 CFR part 183 to reflect the standards in ABYC S-30. Consequently, 100% of the costs of this rule are due to a Congressional mandate and the Coast Guard has no discretion to adopt a different standard that would lower the cost of this rule. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

Table 1 of this document provides a summary of the affected population, costs, and benefits of this rule.

Table 1: Summary of the Impacts of the Interim Rule

Category	Summary
Applicability	Update Table 4 of subpart H in 33 CFR part 183 with ABYC S-30
Affected Population	1,427 manufacturers of monohull outboard boats of less than 20 feet in length

Costs to Industry (\$, 7% discount rate)	10-year: \$6,624,488 Annualized: \$943,178
Unquantified Benefits	Creates uniformity by aligning all boats to the same standard Brings those boats not currently in compliance with ABYC S-30 to a higher level of safety than the standard currently in regulation

Affected Population

This interim rule will adopt the current ABYC S-30 to replace Table 4 of subpart H in 33 CFR part 183. Table 4 applies to monohull outboard boats that are less than 20 feet in length, including recreational vessels and some commercial fishing vessels.

Table 4 is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels), and 46 CFR part 180 (small passenger vessels under 100 gross tons). Small passenger vessels are required to carry certain survival craft, depending on their route and construction, in order to have the capacity to evacuate a certain percentage of the number of people on board. These survival craft are generally life rafts or floats, which do not have engines and are not impacted by this interim rule. However, small passenger vessels could voluntarily carry a small boat that can be used to carry some of the passengers, thereby reducing the number of other survival craft they are required to carry (46 CFR 117.200(b) and 46 CFR 180.200(b)). Because this is a voluntary option available for these vessels, we do not include them in our analysis. However, we do note that if the uninspected vessels, small passenger vessels carrying more than 150 passengers, towing vessels, or small passenger vessels under 100 gross tons choose to carry a small boat on board that does not meet ABYC S-30 standard, they could be indirectly affected by this interim rule. Because this interim

rule applies only to new boats manufactured after June 1, 2018, any small passenger vessels already carrying small boats subject to Table 4 of subpart H will not be affected. If they choose to replace their small boat with a boat built after June 1, 2018, they may be indirectly affected if the manufacturer passes the costs of this interim rule on to the consumers. We account for the direct costs to manufacturers in this analysis.

The interim rule will affect manufacturers that produce monohull outboard boats that are less than 20 feet in length and that are not currently building boats to ABYC S-30 standard. The Coast Guard used the list of active Manufacturer Identification Code (MIC) holders, as required by 33 CFR part 181, subpart C, to determine the affected population. This list represents all recreational boat MICs that are currently active. We then removed any MICs that will not be affected by this rule from the list of manufacturers. This includes: (1) Manufacturers with multiple MICs; (2) MICs belonging to manufacturers that only build boats greater than 20 feet in length; (3) MICs belonging to manufacturers that do not build monohull outboard boats; and (4) MICs belonging to manufacturers that only produce boats exempted from this regulation by 33 CFR 183.201(b), including sailboats, canoes, kayaks, inflatable boats, submersibles, surface effect vessels, amphibious vessels, and raceboats. We found there are no more than 1,519 affected manufacturers that produce monohull outboard boats that are less than 20 feet in length.

Some of these 1,519 monohull manufacturers are currently in compliance with ABYC S-30 standard, and therefore will not incur additional costs because of this rule. The National Marine Manufacturers Association (NMMA) requires its members to build boats to the ABYC standard.² These NMMA builders produce about 85 percent of the recreational boats built each

² See Michael Vatalaro, What “NMMA-Certified” Really Means, BOATUS, Feb. 2014, <http://www.boatus.com/magazine/2014/february/what-nmma-certified-means.asp>.

year.³ We found 92 monohull manufacturers that are currently NMMA members and therefore we assume they are in compliance. We assume the remaining 1,427 monohull manufacturers are not compliant with the current voluntary standard and will be affected by this rule.

Costs to Industry

This interim rule will adopt the current ABYC S-30, to replace Table 4 of subpart H. This change will increase costs to 1,427 monohull manufacturers that are assumed to be not in compliance. The increase in the weight table figures will require an additional 1 to 2 cubic feet of flotation to be added to each boat manufactured after the implementation date of June 1, 2018. We estimate the foam for the additional flotation will cost an average of \$10 per boat.⁴ Some manufacturers may need to make minor adjustments such as enclosing an aft seat and adding foam under the seat to accommodate the additional foam in the boats. Therefore, Coast Guard uses an estimate of \$50 per boat to account for the foam and any minor adjustments that may be necessary.⁵ Manufacturers could incur costs related to determining where to put the additional flotation on a vessel, but we believe redesign costs would not be needed as the additional flotation material is minimal and the placement of the material is fairly standard. The manufacturers are already required to add flotation to boats, so there will be no costs for new equipment, facilities, or retrofitting of facilities.

To estimate the total cost to industry, we then estimated the total number of outboard

³ Id.

⁴ The \$10 estimate is based on 2 LB Density Urethane Foam estimates from US Composites (<http://www.uscomposites.com/foam.html>) and conversations with manufacturers. Foam prices vary based on the size of the kits. The cost of kits range from a 2 cubic foot kit cost of \$22.50 (\$11.25 per cubic foot) to \$264 for a 40 cubic foot kit (\$6.60 per cubic foot). Conversations with manufacturers confirmed \$10 is a reasonable average estimate for adding 1 to 2 cubic feet of additional flotation, that takes into account the varying costs based on the size of kits purchased and that manufacturers may pay less than the listed prices based on their purchasing agreements with the suppliers.

⁵ Based on discussions with manufacturers, the additional \$40 estimate is to cover the cost of enclosing a rear seat to add flotation foam under it or to add small chambers, especially on open aluminum boats, to accommodate the additional flotation foam.

boats less than 20 feet in length manufactured per year by the monohull manufacturers that are not in compliance. The Coast Guard used data from the NMMA's 2015 Recreational Boating Statistical Abstract⁶ to estimate the total affected outboard boats. The NMMA breaks down outboard boat sales by two hull materials: fiberglass and aluminum. The NMMA estimates that in 2015, 51,300 fiberglass outboard boats and 104,500 aluminum outboard boats were sold. Of these boats sold, 42.7 percent of the fiberglass outboard boats and 60.4 percent of the aluminum outboard boats were less than 20 feet in length. Multiplying the percentage market share of boats less than 20 feet by the total sales of boats by material, we found there were 21,905 fiberglass boats and 63,118 aluminum outboard boats less than 20 feet sold in 2015 (see Table 2).

Table 2: Total Sales and Market Share of Outboard Boats by Material Type

Outboard Boat by Material	Estimated Total Sales	Percentage Market Share Outboard Boats less than 20 feet	Total Outboard Boats less than 20 feet Sold in 2015
Fiberglass	51,300	42.7%	21,905
Aluminum	104,500	60.4%	63,118
Total	155,800		85,023

The total 85,023 outboard boats less than 20 feet that were sold in 2015 were produced by a mix of manufacturers that are already in compliance with the ABYC S-30 standard and manufacturers that are not in compliance and will be impacted by this rule. The NMMA estimates that around 85 percent of the boats sold in the United States are already in compliance

⁶ A summary of the NMMA abstract is available at <https://www.nmma.org/statistics/publications/statistical-abstract>. The full report is available for purchase through NMMA. The Coast Guard used data from Powerboat Sales Trends, Table 1: Outboard boats: estimated sales by hull market; Table 2: Fiberglass outboard boats: estimated market share by length; and Table 3: Aluminum outboard boats: estimated market share by length.

with the ABYC S-30 standard. Therefore, the Coast Guard estimates 15 percent of the total outboard boats less than 20 feet sold were produced by manufacturers not in compliance with the ABYC standard. These 12,753 boats (15 percent of the 85,023 outboard boats less than 20 feet, rounded) will require \$50 of additional flotation materials to align with the new standard.

To estimate the affected outboard boats over our 10-year period of analysis, we used NMMA data to forecast future boat building production.⁷ The NMMA anticipates annual production will rise through at least 2018 before leveling off into at least early 2019. The NMMA does not have estimates for production past 2019. Since the NMMA anticipates production will plateau once it reaches the levels of production estimated in 2019, the Coast Guard assumes production will hold at 2019 levels. Production could decrease or increase, resulting in higher or lower industry costs, but for the purposes of this analysis we assume production remains constant past 2019. Table 3 shows our baseline affected population, the forecasted percentage increases over the previous year estimated by NMMA, and the resulting number of affected outboard boats.⁸

Table 3: Forecasted Affected Outboard Boats

Year	Forecasted Percentage Increase over Previous Year	Affected Outboard Boats Manufactured Annually
2015	--	12,753
2016	11.6%	14,232
2017	15.2%	16,402
2018	9.2%	17,916
2019	6.1%	19,009

⁷ Production forecasts are internal NMMA estimates that were provided to the Coast Guard on 9/7/2016.

⁸ Forecasted percentages for 2016 and 2019 were given in NMMA data. Forecasted percentages for years 2017 and 2018 were calculated from NMMA's forecasted annual production index. For 2017, the affected outboard boats manufactured annually are calculated as $[1 + ((170.1 - 147.6) / 147.6)] * 14,232 = 16,402$, rounded. For 2018, the affected outboard boats manufactured annually are calculated as $[1 + (185.8 - 170.1) / 170.1] * 16,402$, rounded.

2020+	0.0%	19,009
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As this interim rule will be effective June 1, 2018, any outboard boats manufactured after this date will need to be in compliance with ABYC S-30 standard. The Coast Guard anticipates most manufacturers will begin making the necessary changes at the beginning of 2018. All manufacturers will be in compliance by June 1, 2018 of Year 1, which corresponds with the 2018 estimated affected outboard boats in Table 3. We estimate there will be 17,916 affected outboard boats in Year 1 and 19,009 affected outboard boats in Years 2 through 10. Table 4 summarizes the estimated affected population of outboard boats that we used to estimate the 10-year costs of this interim rule.

Table 4: Ten-year Projection of Affected Outboard Boats

Year	Affected Outboard Boats
1	17,916
2	19,009
3	19,009
4	19,009
5	19,009
6	19,009
7	19,009
8	19,009
9	19,009
10	19,009

We then multiplied the projected number of affected outboard boats each year in Table 4 by the estimated cost per boat of \$50. Table 5 shows the total costs of this interim rule on an undiscounted basis, and discounted at 7 and 3 percent.

Table 5: Total Costs of Interim Rule

Year	Total Undiscounted Costs	Total, Discounted	
		7%	3%
1	\$895,800	\$837,196	\$869,709
2	\$950,450	\$830,160	\$895,890
3	\$950,450	\$775,850	\$869,796
4	\$950,450	\$725,094	\$844,463
5	\$950,450	\$677,658	\$819,867
6	\$950,450	\$633,325	\$795,987
7	\$950,450	\$591,892	\$772,803
8	\$950,450	\$553,171	\$750,294
9	\$950,450	\$516,982	\$728,441
10	\$950,450	\$483,161	\$707,224
Total	\$9,449,850	\$6,624,488	\$8,054,473
Annualized		\$943,178	\$944,230

Note: Totals may not sum due to independent rounding.

The total 10-year undiscounted cost of this interim rule is \$9,449,850. The total 10-year discounted cost of this interim rule is \$6,624,488 and the annualized cost is \$943,178, both discounted at 7 percent. The manufacturers of outboard boats less than 20 feet in length not in compliance with ABYC S-30 standard will bear these costs. However, it is possible that manufacturers may pass these costs onto the recreational boat owners by incorporating the additional costs of this interim rule into the sales price. The sale price of the affected boats can range from \$3,000 through \$50,000. If we use an average of \$26,500 per boat, the \$50 average cost per boat represents 0.2 percent of the sales price. However, 85 percent of the boats sold in the United States are already in compliance and include this cost of floatation in the sales prices.

Benefits

This rule does not provide any quantitative benefits. However, it does have qualitative

benefits. This rule will create uniformity by aligning all boats to the same standard. The ABYC S-30 provides a higher level of safety than that provided by the standard currently in the regulation. Requiring all boats less than 20 feet in length that currently do not meet ABYC S-30 standard weights to comply with that standard will improve the buoyancy of these boats, and therefore, improve their safety.

B. Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard prepared this Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the interim rule on small entities (5 U.S.C. 601 et seq.). We recognize that an IRFA is not required for an interim rule that was not preceded by a general notice of proposed rulemaking. We are including an analysis of the interim rule requirements on small entities for informational purposes.

A small entity may be: a small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

An IRFA addresses the following:

- (1) A description of the reasons why action by the agency is being considered;
- (2) A succinct statement of the objectives of, and legal basis for, the rule;
- (3) A description of and, where feasible, an estimate of the number of small entities to which the rule will apply;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the rule; and

(6) A description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

1. A description of the reasons why action by the agency is being considered.

Congress has authorized the Coast Guard to prescribe regulations establishing minimum safety standards for recreational vessels and associated equipment. In 1977, the Coast Guard established flotation requirements for boats less than 20 feet in length, and established a weight table (Table 4 of subpart H in 33 CFR part 183) used to assist the boat manufacturer in determining the amount of flotation to be included in a boat's design and construction.

Table 4 was last updated in 1984, but the size and weight of outboard engines has evolved over the years to the point where Table 4 no longer accurately represents the weights of outboard engines available on the market. Changes in the design and construction of modern outboard engines necessitate a change in the table of outboard engine weights used in calculating safe loading capacities and required amounts of flotation material in the Safe Loading and Flotation Standards found in 33 CFR part 183, subparts G and H.

2. A succinct statement of the objective of, and legal basis for, the rule.

Congress has authorized the Coast Guard to prescribe regulations establishing minimum

safety standards for recreational vessels and associated equipment. Section 308 of the CGAA requires the Coast Guard to issue regulations updating Table 4 of subpart H in 33 CFR part 183 with ABYC S-30 not later than 180 days after enactment. This rulemaking will adopt the current ABYC S-30 to replace Table 4. The current ABYC S-30 is dated July 2012. Table 4 of subpart H applies to monohull outboard boats that are less than 20 feet in length, which includes recreational vessels as well as some commercial fishing vessels. It is also used indirectly for flotation requirements for survival craft covered by 46 CFR part 25 (uninspected vessels), 46 CFR part 117 (small passenger vessels carrying more than 150 passengers), 46 CFR part 141 (towing vessels), and 46 CFR part 180 (small passenger vessels under 100 gross tons).

3. A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.

This interim rule will affect manufacturers that produce monohull outboard boats that are less than 20 feet in length that are not currently building boats to ABYC S-30 standard.

Based on Coast Guard's list of active MIC holders, we estimate this interim rule will affect 1,427 U.S. companies. We researched the number of employees and revenue of these companies using proprietary and public business databases.⁹ We then measured company size data using the Small Business Administration's (SBA) business size standards to assess how many companies in this industry may be small entities.¹⁰ The SBA provides business size standards for all sectors of the North American Industry Classification System (NAICS).¹¹

Using a random sample of companies out of the total population of 1,427 affected U.S.

⁹ Data sources: ReferenceUSA (www.referenceusagov.com) and Manta (www.manta.com).

¹⁰ "Small entities" include small businesses that meet the Small Business Administration size standard for small business concerns at 13 C.F.R. 121.201, small governmental jurisdictions with a population of less than 50,000, and small organizations that are independently owned not-for-profit enterprises and which are not dominant in their field. See 5 U.S.C. 601(3)-(5).

¹¹ SBA size standards are matched to NAICS, effective February 26, 2016. See Contracting: Table of Small Business Size Standards, SMALL BUSINESS ADMINISTRATION, <https://www.sba.gov/content/small-business-size-standards>.

companies, we researched 749 companies and found company-specific revenue and employment information and data on 388 of them.¹² We assumed that the remaining 361 companies (for which the revenue and employment information was unavailable) are small entities for the purpose of this analysis. Of the 388 companies for which revenue and employment information was available, we found three entities that exceeded the small entity thresholds for their relevant NAICS code. The remaining 385 companies are small entities as defined by the SBA thresholds. Adding these small entities to the companies without revenue and employment information, we estimate a total of 746 of the companies are small entities. Using the results of this random sample, we calculated the fraction of small entities by dividing the total small entities by the sample size. Therefore, we estimate that 99.6 percent of all monohull companies not currently building to ABYC S-30 standard fall below the threshold for small businesses. Table 6 summarizes the findings of our small entity threshold analysis.

Table 6: Number of Companies and Small Entities Researched

Category	Number of Companies
(a) Sample Size	749
(b) Without Revenue or Employment Data	361
(c) With Revenue or Employee Data	388
(d) Exceeded Small Entity Threshold	3
(e) Below the Small Business Threshold	385
Total Small Entities, (b) + (e)	746
Total, (a)	749
Fraction Small Entities	99.6%

¹² Using a 95 percent confidence level, a sample size of 385 companies is sufficient. Our research started with a random sample of 749 companies that yielded 388 entities for which requisite information was found.

Our analysis of the available company information revealed 64 primary NAICS codes. Table 7 displays the NAICS codes of the small entities found in our sample.

Table 7: NAICS Codes of Identified Small Entities

Title	NAICS Code	Count of Companies	SBA Size Standard Type	SBA Size Threshold
Boat Building	336612	151	Employees	1,000
Boat Dealers	441222	56	Revenue	\$32,500,000
Other Personal and Household Goods Repair and Maintenance	811490	32	Revenue	\$7,500,000
Marinas	713930	28	Revenue	\$7,500,000
All Other Support Services	561990	14	Revenue	\$11,000,000
Mineral Wool Manufacturing	327993	11	Employees	1,500
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	811310	8	Revenue	\$7,500,000
All Other Miscellaneous Manufacturing	339999	5	Employees	500
Fabricated Structural Metal Manufacturing	332312	4	Employees	500
New Single-family Housing Construction (Except For-Sale Builders)	236115	3	Revenue	\$36,500,000
All Other Plastics Product Manufacturing	326199	3	Employees	750
Sporting and Recreational Goods and Supplies Merchant Wholesalers	423910	3	Employees	100
Other Miscellaneous Durable Goods Merchant Wholesalers	423990	3	Employees	100
Other Building Material Dealers	444190	3	Revenue	\$20,500,000
Engineering Services	541330	3	Revenue	\$15,000,000
All Other Business Support Services	561499	3	Revenue	\$15,000,000
Site Preparation	238910	2	Revenue	\$15,000,000

Contractors				
Sheet Metal Work Manufacturing	332322	2	Employees	500
Special Die and Tool, Die Set, Jig and Fixture Manufacturing	333514	2	Employees	500
Travel Trailer and Camper Manufacturing	336214	2	Employees	1,000
Wholesale Trade Agents and Brokers	425120	2	Employees	100
All Other Miscellaneous Store Retailers (except Tobacco Stores)	453998	2	Revenue	\$7,500,000
Museums	712110	2	Revenue	\$27,500,000
Hunting and Trapping	114210	1	Revenue	\$5,500,000
Water Supply and Irrigation Systems	221310	1	Revenue	\$27,500,000
Commercial and Institutional Building Construction	236220	1	Revenue	\$36,500,000
Other Heavy and Civil Engineering Construction	237990	1	Revenue	\$36,500,000
Plumbing, Heating, and Air-Conditioning Contractors	238220	1	Revenue	\$15,000,000
All Other Specialty Trade Contractors	238990	1	Revenue	\$15,000,000
Fabric Coating Mills	313320	1	Employees	1,000
Other Millwork (including Flooring)	321918	1	Employees	500
Plastics Material and Resin Manufacturing	325211	1	Employees	1,250
Fertilizer (Mixing Only) Manufacturing	325314	1	Employees	500
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	327999	1	Employees	500
Alumina Refining and Primary Aluminum Production	331313	1	Employees	1,000
Aluminum Sheet, Plate and Foil Manufacturing	331315	1	Employees	1,250
Other Aluminum Rolling, Drawing, and Extruding	331318	1	Employees	750

Plate Work Manufacturing	332313	1	Employees	750
Farm Machinery and Equipment Manufacturing	333111	1	Employees	1,250
Overhead Traveling Crane, Hoist and Monorail System Manufacturing	333923	1	Employees	1,250
All Other Miscellaneous General Purpose Machinery Manufacturing	333999	1	Employees	500
Other Communications Equipment Manufacturing	334290	1	Employees	750
Truck Trailer Manufacturing	336212	1	Employees	1,000
Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	336330	1	Employees	1,000
Ship Building and Repairing	336611	1	Employees	1,250
All Other Transportation Equipment Manufacturing	336999	1	Employees	1,000
Sporting and Athletic Goods Manufacturing	339920	1	Employees	750
Hobby, Toy and Game Stores	451120	1	Revenue	\$27,500,000
Scenic and Sightseeing Transportation, Water	487210	1	Revenue	\$7,500,000
Navigational Services to Shipping	488330	1	Revenue	\$38,500,000
Miscellaneous Intermediation	523910	1	Revenue	\$38,500,000
Recreational Goods Rental	532292	1	Revenue	\$7,500,000
Landscape Architectural Services	541320	1	Revenue	\$7,500,000
Industrial Design Services	541420	1	Revenue	\$7,500,000
Graphic Design Services	541430	1	Revenue	\$7,500,000
Administrative Management and General Management Consulting Services	541611	1	Revenue	\$15,000,000
Other Management Consulting Services	541618	1	Revenue	\$15,000,000
All Other Professional, Scientific and Technical	541990	1	Revenue	\$15,000,000

Services				
Landscaping Services	561730	1	Revenue	\$7,500,000
All Other Miscellaneous Schools and Instruction	611699	1	Revenue	\$11,000,000
Emergency and Other Relief Services	624230	1	Revenue	\$32,500,000
Fitness and Recreational Sports Centers	713940	1	Revenue	\$7,500,000
RV (Recreational Vehicle) Parks and Campgrounds	721211	1	Revenue	\$7,500,000
Civic and Social Organizations	813410	1	Revenue	\$7,500,000

Revenue Impacts of the Interim Rule. To determine the impacts of the interim rule on small monohull manufacturers, we used information on revenues or employee size as available on business directory websites.¹³

As discussed in the “Cost to Industry” section of the RA, we estimate that there are 17,916 outboard boats less than 20 feet produced by manufacturers annually that will require additional flotation materials to align with this interim rule in Year 1. Coast Guard does not have information on the market share of the small entity manufacturers and the number of boats they produce each year. Therefore, we assume each manufacturer consistently produces the same number of boats each year and that each manufacturer has the same market share. With 1,427 affected U.S. companies, this is an average of about 13 outboard boats per manufacturer (rounded). In Years 2 through 10, the Coast Guard estimates there are 19,009 outboard boats affected, at an average of about 13 outboard boats per manufacturer (19,009 boats divided by 1,427 manufacturers, rounded). At an estimated cost of \$50 per outboard boat, the average total cost per manufacturer is \$650 in Years 1 through 10. Table 8 summarizes the average costs per

¹³ As indicated by either the revenue or employee data for businesses, we use ReferenceUSA (www.referenceusagov.com) and Manta (www.manta.com).

manufacturer of the interim rule by year.

Table 8: Interim Rule Average Costs per Manufacturer

Year(s)	Affected Outboard Boats	Manufacturers not in Compliance	Average Outboard Boats Produced by Manufacturer	Cost per Outboard Boats	Average Cost Per Manufacturer
1	17,916	1,427	13	\$50	\$650
2-10	19,009	1,427	13	\$50	\$650

Next, we compared the average cost per manufacturer to the revenue of the manufacturers in our sample. As shown in Table 6, we found revenue or company data for 385 small entities. We found revenue information for 371 of these small entities, and we were only able to find employee data for 14 entities. Therefore, we could not compare the cost per manufacturer to the revenues for the 14 entities with only employee data. Table 9 summarizes the results. In Years 1 through 10, 94.6 percent of the affected manufacturers will incur a cost of 1 percent or less of revenue in any given year, while 0.3 percent will incur a cost impact of greater than 10 percent of revenue.

Table 9: Interim Rule Revenue Impacts

Impact Range	Number of Affected Manufacturers	% of Affected Manufacturers
0% < Impact ≤ 1%	352	94.9%
1% < Impact ≤ 3%	17	4.6%
3% < Impact ≤ 5%	1	0.3%
5% < Impact ≤ 10%	0	0%
≥ 10%	1	0.3%
Total	371	100%

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be

subject to the requirements and the type of professional skills necessary for preparation of the report or record.

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this interim rule.

6. A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

This interim rule implements section 308 of CGAA. The CGAA mandates the update of Table 4 in 33 CFR part 183. As such, the Coast Guard has no discretion to offer alternatives that minimize the impact on small entities while accomplishing the stated objective of the statute. To ease implementation of this requirement, the Coast Guard is delaying the effective date until June 1, 2018, so that the new requirements will apply only to boat manufacturers who build boats after that date.

7. Conclusion.

We are interested in the potential impacts from this interim rule on small businesses and we request public comment on these potential impacts. If you think that this interim rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under ADDRESSES in the interim rule. In your comment, explain why, how, and to what degree you think this interim rule will have an economic impact

on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 ("Federalism"), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under E.O. 13132 and have determined that it is consistent with the fundamental federalism principles and requirements described in Executive Order 13132. Our analysis is explained below.

Congress directed the Coast Guard to “establish minimum safety standards for recreational vessels” (46 U.S.C. 4302). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 4306. Under 46 U.S.C. 4306, “a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated or equipment performance or other safety standard . . . that is not identical to a regulation prescribed under” 46 U.S.C. 4302. As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel’s obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this

rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (“Governmental Actions and Interference with Constitutionally Protected Property Rights”).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, (“Civil Justice Reform”), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 (“Protection of Children from Environmental Health Risks and Safety Risks”). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action”

under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses a voluntary consensus standard: the current ABYC S-30.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f, and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist and a categorical exclusion determination supporting this determination are available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule involves the safe loading capacity and required amount of flotation material for certain recreational boats, which concerns equipping of vessels, equipment and vessel operation safety standards. As such, this action is categorically excluded under section 2.B.2 and figure 2-1, paragraph (34)(d) and (e) of the Instruction and under section 6(a) of the

“Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48243, July 23, 2002).

VII. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this interim rule, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

List of Subjects in 33 CFR Part 183

Marine safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 183 as

follows:

PART 183—BOATS AND ASSOCIATED EQUIPMENT

1. The authority citation for part 183 is revised to read as follows:

Authority: 46 U.S.C. 4302; Pub. L. 103-206, 107 Stat. 2439; and Department of Homeland Security Delegation No. 0170.1, para. II, (92)(b). Subpart E is also authorized by Pub. L. 114-120, 130 Stat. 27.

§ 183.41 [Amended]

2. Amend § 183.41 as follows:

- a. In paragraph (a)(1), remove the text “from table 4 of subpart H of this part” and add, in its place, the text “required by § 183.75”; and

- b. In paragraph (a)(2)(ii), remove the text “shown in table 4 of subpart H of this part” and add, in its place, the text “required by § 183.75”.

3. Add subpart E to read as follows:

Subpart E-Flotation and Safe Loading Requirements--Outboard Motor and Related Equipment Test Weights

§ 183.75 Applicability.

Manufacturers of vessels to which this subpart applies must use test weights that are not less than the recommended weights set forth in Table 183.75. Table 183.75 details the weight (in pounds) of gasoline outboard engines and related equipment for various rated power (horsepower) ranges.

TABLE 183.75 - WEIGHTS (IN POUNDS) OF GASOLINE OUTBOARD ENGINES AND RELATED EQUIPMENT FOR VARIOUS RATED POWER (HORSEPOWER) RANGES

SINGLE ENGINE INSTALLATIONS								
Column Number								
1	2	3	4	5	6	7	8	9
Engine Power Range (Horsepower)	Dry Weight ^{1, 2}	Running Weight ³	Swamped Weight ⁴	Controls & Rigging ⁵	Battery Weight, Dry	Battery Weight Submerged	Full Portable Fuel Tank ⁶	Total Weight (Sum of Columns 3,5,6,8)
0.1 - 2.0	30	32	27	0	0	0	0	32
2.1 - 3.9	42	44	37	0	0	0	0	44
4.0 - 6.9	66	69	59	0	0	0	25	94
7.0 - 10.9	105	110	94	5	20	11	50	185
11.0 - 22.9	127	133	113	6	45	25	50	234
23.0 - 34.9	187	196	167	9	45	25	100	350
35.0 - 64.9	286	300	255	14	45	25	100	459
65.0 - 94.9	439	461	392	22	45	25	100	628
95.0 - 104.9	458	481	409	23	45	25	100	649
105.0 - 144.9	526	552	469	26	45	25	100	723
145.0 - 194.9	561	589	501	28	45	25	100	762
195.0 - 209.9	652	685	582	33	45	25	100	863
210.0 - 300.0	699	734	624	35	45	25	100	914
300.1 - 350.0	884	928	789	44	45	25	100	1117

Notes:

¹ Dry weight is the manufacturer's published weight for the shortest midsection increased by 10 percent to account for longer midsections and additional required hardware usually not included in published weights. This weight is intended to represent the heaviest model in each power category. For boats designed with a transom height of 20 inches or less, the weight in Column 2 may be reduced by 10 percent. Recalculate Columns 3, 4, and 9 as appropriate.

² For diesel outboards, replace the value in Column 2 with the manufacturer's published dry weight + 10 percent.

³ Running weight is the dry weight plus fluids (including 2-stroke oil) and the heaviest recommended propeller. Calculated as 5 percent of dry weight.

⁴ Swamped weight is 85 percent of running weight.

⁵ Rigging and controls include engine related hardware required to complete the installation (e.g., controls, cables, hydraulic hoses, steering pumps and cylinders). Calculated as 5 percent of dry weight.

⁶ If the boat is equipped with a permanent fuel system and is not intended to use a portable tank, the portable fuel tank weight may be omitted.

§ 183.220 [Amended]

4. Amend § 183.220 as follows:

- a. In paragraph (b)(2), remove the text “shown in Column 6 of Table 4” and add, in its place, the text “shown in Column 9 of Table 183.75”; and
- b. In paragraph (d), remove the text “specified in Columns 2 and 4 of Table 4 for the swamped weight of the motor and controls and for the submerged weight or” and add, in its place, the text “specified in Columns 4 and 7 of Table 183.75 for the swamped weight of the motor and controls and for the submerged weight of”.

§ 183.320 [Amended]

5. Amend § 183.320 as follows:

- a. In paragraph (b)(2), remove the text “shown in column 6 of Table 4” and add, in its place, the text, “shown in Column 9 of Table 183.75”; and
- b. In paragraph (d), remove the text “specified in Column 2 of Table 4” and add, in its place, the text “specified in Column 4 of Table 183.75”.

Table 4 to Subpart H of Part 183 [Removed]

6. Remove Table 4 to Subpart H of Part 183.

Dated: March 29, 2017.

V. B. GIFFORD

Captain, U. S. Coast Guard,

Director of Inspections and Compliance.

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